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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,744	08/28/2001	Christopher Carl Wulforst	5308	5156

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Milliken & Company  
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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/940,744

Applicant(s)

WULFORST ET AL.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The final rejection mailed on 10/29/04 has been withdrawn in view of the rejection below. In addition, the after-final amendment filed 4/7/05 will not be enter.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "film is a multi-layer film" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 & 14, the phrase "said removable encasing having a top surface and a bottom surface, a face textile with an exterior surface" is unclear because it appears that the top surface of the encasing and the exterior surface of the face textile are the same element and not separate elements. In addition, the phrase "at least the entire top surface of the removable encasing" is unclear because it appears that the odor layer covers the interior surface of the face textile and not the top surface of the encasing. Regarding claim 13, the phrase "said backing material" lacks prior antecedent basis.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Denesuk et al. (US 6196156) in view of Ryan et al. (US 5019062).

For claim 1, Denesuk et al. teach in fig. 4, an animal bed comprising a removable encasing 12 and a cushioning core 14; said removable encasing having a top surface

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and a bottom surface, a face textile 12,18 with an exterior surface and an interior surface, and an odor receiving layer (col. 28, lines 55-65) that can be incorporated in the components of the bed (col. 28, lines 60-65), and said cushioning core located adjacent to the odor receiving layer. Note, the odor receiving layer can be permanently disposed by a user not removing it and the odor layer is being adhered to the components as stated in col. 28, line 64, similar to Applicant's odor layer adhering to the surface. However, Denesuk et al. are silent about the odor receiving layer being disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface of the removable encasing. Ryan et al. teach an animal bed comprising odor receiving layer 12 being disposed on an interior surface of a face textile 26,126, or 226 in a configuration that covers at least the entire top surface of the removable encasing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose the odor receiving layer of Denesuk et al. on the interior surface of an encasing as taught by Ryan et al. in order to prevent the animal from access the odor receiving layer, i.e. activated charcoal and/or zeolites. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the odor layer of Denesuk et al. to cover the entire surface of the bed as taught by Ryan et al. in order to provide odor coverage for the whole bed and not just certain area.

For claim 2, Denesuk et al. as modified by Ryan et al. (emphasis on Denesuk) teach wherein said odor receiving layer comprises an absorbing agent (zeolites, col. 28, line 59).

For claims 3 & 4, Denesuk et al. as modified by Ryan et al. (emphasis on Denesuk) teach wherein said odor receiving layer comprises an adsorbing agent (activated charcoal, col. 28, line 59).

For claim 5, Denesuk et al. as modified by Ryan et al. are silent about wherein said activated charcoal has a about a 100 x 150 particle screened size, and is distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the activated charcoal of Denesuk et al. as modified by Ryan et al. with a about a 100 x 150 particle screened size, and to distribute on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 6, Denesuk et al. as modified by Ryan et al. (emphasis on Denesuk) teach wherein said odor receiving layer includes an adhesive (col. 28, line 64).

For claim 7, in addition to the above, Ryan et al. teach a hot melt adhesive to hold the activated charcoal on the interior surface of the bed (col. 8, lines 40-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hot melt adhesive as further taught by Ryan et al. as the preferred adhesive in the bed of Denesuk et al. as modified by Ryan et al. in order to provide a stronger bond surface between the activate charcoal and the interior surface.

For claim 8, Denesuk et al. as modified by Ryan et al. teach wherein said hot melt adhesive is a film (a film is created by spreading the hot melt adhesive) securing the charcoal against the interior surface.

For claim 9, Denesuk et al. as modified by Ryan et al. (emphasis on Denesuk) teach a backing material 18 disposed adjacent to the odor adsorbing layer.

For claim 10, Denesuk et al. as modified by Ryan et al. (emphasis on Denesuk) teach the backing material comprises a backing textile (col. 9, lines 50-55).

For claim 11, Denesuk et al. as modified by Ryan et al. are silent about the backing textile comprises a point bonded nonwoven material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the backing textile of Denesuk et al. as modified by Ryan et al. comprises a point bonded nonwoven material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 12, Denesuk et al. as modified by Ryan et al. teach wherein said backing material comprises a film (since it's a sheet of material).

For claim 13, Denesuk et al. as modified by Ryan et al. are silent about the wherein the film of said backing material comprises a low density polyester film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the backing textile of Denesuk et al. as modified by Ryan et al. comprises a low density polyester film, since it has been held to be within the general skill of a

worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 14-17, see the above claims for explanation.

For claim 18, Denesuk et al. as modified by Ryan et al. are silent about the backing material being multi-layer film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a multi-layer backing material in the bed of Denesuk et al. as modified by Ryan et al. depending on how much support one wishes to have for the activated charcoal and bed.

For claim 19, Denesuk et al. as modified by Ryan et al. are silent about the film being a polyethylene film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the film of Denesuk et al. as modified by Ryan et al. be a polyethylene film, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.


### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn